question as to whether specific performance will be decreed in respect to those lands not contained in the homestead. That it will, or damages will be allowed for the breach: *Weitzner* v. *Thingstad,* 55 Minn. 244; 56 N. W. 817. That the whole contract is void and specific performance will be decreed for no part: *Mundy* v. *Shellaberger,* 153 Fed. 219. As to the recovery of damages for the breach of a contract to convey the homestead when the wife has not signed, the courts are not unanimous in their holdings. In Michigan the question has never been so directly before the court as to be definitely decided. In the principal case, the opinion in *Dikeman* v. *Arnold,* 78 Mich. 455, where the action was for damages, for the breach of a contract to convey lands, including a homestead, is construed by both sides of the court as being in support of their view. In Texas, it seems to be settled that the contract is not wholly void and the vendee may recover damages for the breach. *Cross* v. *Everts,* 28 Tex. 524. But there is an earlier case, *Berlin* v. *Burns,* 17 Tex. 533, which seems to have been entirely overlooked by the later cases, and which held that a promise to pay money to release a contract for conveyance of a homestead, when the wife refused to sign, was unenforceable, as the consideration, the supposed damage arising from the breach, was no valid consideration, since such contracts have no binding effect on the husband. SMYTH, in his work, HOMESTEAD & EXEMPTIONS, §259, says that the California court allows damage for the breach of such a contract, but the case he cites, *Clarkin* v. *Lewis,* 20 Cal. 634, was an action by the vendee to recover back money paid, and the court might have held differently had it been an action for damages for failure to convey, as is pointed out in *Barnett* v. *Mendenhall,* 42 Ia. 296. A larger number of states hold that the contract is wholly void and no damages can be recovered for a breach. *Thimes* v. *Stumpff,* 33 Kan. 53; 5 Pac. 431; *Hodges* v. *Farnham,* 49 Kan. 777, 31 Pac. 606; *Barton* v. *Drake,* 21 Minn. 299; *Weitzner* v. *Thingstad,* 55 Minn. 244, 56 N. W. 817; *Barnett* v. *Mendenhall,* 42 Ia. 296; *Cowgell* v. *Warrington,* 66 Ia. 666, 24 N. W. 266; *Silander* v. *Gronna,* 15 N. D. 552. 108 N. W. 544; *Lichty* v. *Beale,* 75 Neb. 770, 106 N. W. 1018; *Pipkin* v. *Williams,* 57 Ark. 242, 21 S. W. 433, 38 Am. St. Rep. 241. Also, see WAPLES, HOMESTEAD & EXEMPTION, pp. 384 & 394, and 15 AM. & ENG. ENCYC. OF LAW, 670.

HUSBAND AND WIFE—WIFE'S SEPARATE PERSONAL ESTATE—LIABILITY OF WIFE ON NOTES MADE BY HER.—Defendant, a married woman owned and conducted a store. Through her husband she bought goods, and gave notes therefor, signed by her alone, but with her husband's written consent, as shown in letters. The notes did not expressly or impliedly charge her separate estate. In an action on the notes by an assignee for value and before maturity, *Held,* (CLARK, C. J., dissenting) that the notes were not enforceable against her, although at the time of the execution of the notes and at the time of the trial she owned a separate personal estate. *Mercantile National Bank* v. *Benbow et al.* (1909), — N. C. —, 64 S. E. 891.

§2094, Revisal of 1905 N. C. Statutes provides that no woman during coverture shall be capable of making any contract except for necessary per-

sonal expenses, household expenditures, or to pay debts existing before coverture, without the written consent of her husband. This decision is based solely on the ground that the separate estate is not charged, specifically or impliedly, in the promissory notes. The statutes in no place require that the separate estate be charged in order to make it liable for contracts authorized by the husband. In support of this decision are *Quisenberry* v. *Thompson*, (1897), 19 Ky. Law Rep. 1554 and *Benson* v. *Simmers*, (1899), 21 Ky. Law Rep. 1060. The dissenting opinion, to the effect that the intention to bind the separate estate is to be taken from the facts surrounding the execution of the notes is supported by *Seifert* v. *Jones*, 84 Mo. 591. *Price* v. *Planter's Nat'l. Bank*, 92 Va. 468. *Ozley* v. *Ikelheimer*, 26 Ala. 332. *Wells* v. *Thorman*, 37 Conn. 318, *De Baun* v. *Van Wagoner*, 56 Mo. 347. *Avery* v. *Vansickle*, 35 Ohio St. 270. *Miller* v. *Miller's Adm'r.*, 92 Va. 510. *Law* v. *Lipscomb*, 31 S. C. 504. *Brinkley* v. *Ballance*, 126 N. C. 393. The weight of authority certainly favors the dissenting opinion and apparently the weight of reason is against the decision.

INFANTS—EXECUTED CONTRACT—TIME AND CONDITIONS OF DISAFFIRMANCE. —The plaintiff, a minor, was sole beneficiary under a policy issued on the life of her brother by defendant company for $300. Settlement with plaintiff had been made ten days after the brother's death for $50. In this action during plaintiff's minority she seeks to disaffirm the settlement and recover the whole amount, the $50 received from defendant not being in her possession. On demurrer to the petition it is *Held*: 1. That a minor may disaffirm contracts relating to personalty during minority. 2. That if the minor has not the property in his possession which he received under the contract he seeks to disaffirm, he is not required to make restitution in any form, but may recover the full amount due. *Gonackey* v. *Gen. Accident, Fire & Life Assur. Corporation*, (1909), — Ga. App. —, 65 S. E. 53.

"An infant can disaffirm any contract during minority, except a contract executed by the conveyance of real estate." PAGE, CONTRACTS, §885. *Shirk* v. *Shultz*, 113 Ind. 571, 15 N. E. 12; *Childs* v. *Dobbins*, 55 Ia. 205, 7 N. W. 496; *Bailey* v. *Barnberger*, 11 B. Mon. (Ky). 113; *Adams* v. *Beall*, 67 Md. 53; 1 Am. St. Rep. 379; 8 Atl. 664; *Carr* v. *Clough*, 26 N. H. 280; 59 Am. Dec. 345; *Price* v. *Furman*, 27 Vt. 268; 65 Am. Dec. 194. Contra:—*Lansing* v. *M. C. R. R. Co.*, 126 Mich. 663; 86 Am. St. Rep. 567; 86 N. W. 147, citing *Dunton* v. *Brown*, 31 Mich. 182 to the effect that since the contract is voidable only and not void, it is a matter for his own decision when he arrives at mature age. The modern tendency, however, is to allow disaffirmance during minority, and this is held in the great majority of the states. As to the return of the consideration, the general rule is that any consideration remaining in the hands of the infant at the time of disaffirmance must be returned, but if the consideration has been lost or wasted, return is not a condition precedent to disaffirmance. *Manning* v. *Johnson*, 26 Ala. 446; 62 Am. Dec. 734; *West* v. *Gregg*, 1 Grant's Cas. 53; *Featherstone* v. *Betlejewski*, 75 Ill. App. 59; *United States etc. Co.* v. *Harris*, 142 Ind. 226, 40 N. E. 1072, 41 N. E. 451; *White* v. *New Bedford Cotton-Waste Corp.*, 178 Mass. 20, 59 N.